

Vickers



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Pace Data Systems, Inc.; Senior Care Storage Company  
**File:** B-236083; B-236083.2  
**Date:** November 6, 1989

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### DIGEST

1. Agency evaluation of proposal of below-ground record storage facility, following stipulation in dismissal of court action that above-ground facility could not be a mandatory requirement, but could be considered in evaluation, was reasonable as offered below-ground facility impacted on offeror's ability to comply with other specification requirements.
2. Agency is not required to reopen competition, following court ordered deletion of allegedly restrictive specification, where protester could have submitted proposal under initial solicitation that did not contain restriction, agency received five proposals under solicitation and protester has failed to demonstrate to agency what it would offer as a viable alternative.

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### DECISION

Pace Data Systems, Inc., and Senior Care Storage Company protest actions by the United States Nuclear Regulatory Commission (NRC), in connection with solicitation No. RS-ARM-89-140 to provide record storage services. Pace protests that its proposal was unfairly excluded from award consideration and Senior Care protests NRC's refusal to reopen the competition and permit it to submit a proposal.

We deny the protests.

The request for proposals (RFP) was initially issued on November 16, 1988. Two proposals were received by the closing date of January 4, 1989. Data Base Company Inc.,

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the incumbent small business concern, submitted a proposal as did AT&T, a large business. Since the RFP was issued as a small business set-aside, AT&T's proposal was not eligible for award and was rejected on January 10, 1989. In view of the fact that only one small business concern submitted a proposal, the contracting officer determined to reissue the RFP to obtain more competition.

However, prior to reissuing the RFP the NRC evaluators noted that AT&T had proposed storage space in an underground facility, which the evaluators felt did not comply with National Archives and Records Administration (NARA) facility standards for agency record centers, 36 C.F.R. § 1228.222 (1989), and in particular with § 1228.222(a)(1), which reads:

"The facility should be a single-story building, at or above-ground level, constructed with non combustible materials."

While the initial RFP stated that compliance with all federal archival storage facility standards was required, the revised RFP, issued on February 15, 1989, at paragraph C.3.2.1, explicitly required the contractor to "provide a single above ground record storage facility." Pace protested this requirement for an above-ground facility by letter of March 6, 1989, which was received by the contracting officer on March 13. The protest was denied by the contracting officer on April 24, 1989.

Four proposals were received by the March 16, 1989, closing date, including a proposal from Pace, with AT&T as its subcontractor, offering the AT&T underground facility, and a proposal from Data Base. Following evaluation by the Source Evaluation Panel (SEP), the contracting officer found Data Base and one other small business firm to be in the competitive range.

Before the contracting officer sent letters of rejection to Pace and the other firm excluded from the competitive range, Pace filed an action for a temporary restraining order in the U.S. District Court for the Eastern District of Pennsylvania (Civil Action No. 89-3957). Following various hearings on the action, a dismissal was approved by the court on June 5, 1989, which stated:

"1. It is the position of the defendant Nuclear Regulatory Commission (NRC) that the National Archives and Records Administration standard,

36 C.F.R. § 1228.222 (1989), does not require that agency records must be stored above-ground.

"2. NRC agrees to withdraw its Response to Protest (dated March 16 and April 3, 1989) and to eliminate from consideration of Plaintiff Pace Data Systems, Inc.'s (Pace) bid any minimum requirement that the facilities must be above-ground, but NRC may consider the above-ground status of the facility in accordance with 36 C.F.R. § 1228.222 (1989) and give it whatever weight may be appropriate in the circumstances.

"3. NRC agrees not to issue its draft May 19, 1989, letter evaluating Pace's proposal, and to reconsider and reevaluate Pace's proposal anew fairly and impartially without respect to any minimum requirement that the facilities must be above-ground, but NRC may consider the above-ground status of the facility in accordance with 36 C.F.R. § 1228.222 (1989) and give it whatever weight may be appropriate in the circumstances."

Following the above agreement, the SEP evaluated Pace's proposal and found it unacceptable and by letter of June 16, 1989, the contracting officer advised Pace its proposal was no longer in the competitive range. Pace's timely protest of the rejection to our Office followed.

Pace's protest is grounded on the contention that following the above stipulation, NRC continued to consider only above-ground facilities as acceptable and did not conduct the reevaluation of Pace's proposal fairly and impartially without imposing a minimum requirement of an above-ground facility. Also, according to Pace, the deficiencies which NRC found in Pace's proposal were informational only and were easily correctable.

In reviewing complaints about the reasonableness of the evaluation of a technical proposal, and the resulting determination of whether an offer is within the competitive range, our function is not to reevaluate the proposal and independently judge the proposal's merits. Rather, in light of the reasonable degree of discretion procuring officials have in evaluating proposals, we will determine only whether the evaluation was unreasonable or otherwise in violation of procurement laws and regulations. We will not disturb an agency's decision to exclude a firm from the competitive range where its technical proposal is reasonably

considered so deficient, compared to other proposals, that it would require major revisions to be acceptable. SECHAN Electronics, Inc., B-234308, June 2, 1989, 89-1 CPD ¶ 522.

Based upon our review of the entire evaluation, we find that NRC had a reasonable basis for excluding Pace's proposal from the competitive range. Pace's proposal, following both the initial evaluation and the reevaluation, was the lowest technically rated proposal of the four reviewed. Moreover, in its reevaluation, NRC did not consider an above-ground facility to be a mandatory requirement; rather, it simply considered the impact of the below-grade structure offered by Pace on Pace's ability to meet other specific requirements of the solicitation.

For example, the specification at paragraph C.3.3.j.1 requires "direct access to a loading bay with a locking overhead door." While the Pace facility has a loading bay on the ground level for deliveries, the underground vault area where the records are stored is accessible, according to Pace's proposal, "via an equipment shaft containing a hoist and bucket arrangement capable of a 10,000 pound maximum load." NRC found this arrangement not to be "direct" and downgraded Pace's proposal accordingly.

The RFP, at paragraph C.3.3.f, required that NRC personnel have access to the protected storage area at any time without prior notification to the contractor. Pace's proposal stated that no visitors are allowed in the premises without prior permission and all visitors must be escorted during their entire time in the building. Since NRC plans to send its employees to the storage area at various times to research records stored there, we find NRC had a reasonable basis for finding this aspect of Pace's proposal deficient.

Since NRC personnel would be working at the storage facility, paragraph C.3.3.j.5 of the RFP required that office space for NRC be provided. This was required to consist of a room at least 10 feet by 10 feet directly adjacent to the storage area with a locking door. Pace concedes its proposal did not explicitly deal with this requirement but argues its proposal did state the facility had an "administrative area." We do not think the use of the phrase "administrative area," in connection with an overall description of the facility, was sufficient to show that Pace would meet the RFP requirement.

Finally, paragraph C.3.3.c required the storage area to be for the exclusive storage of NRC records and to be sealed off from access from any adjacent areas. Throughout Pace's

proposal, reference is made to a vault with the impression conveyed that the storage area consists of one large vault. The proposal does not state where NRC's records will be stored in a separate area (a vault for its exclusive use). Pace, in its protest, argues that since the proposal noted that "fire emergency exits are provided in each vault," the NRC evaluators should have known there was an exclusive vault for NRC records. We find it to be asking a great deal of the evaluators to surmise from the above statement regarding emergency exits that NRC's records would be stored in an exclusive area.

We would agree with Pace that some of the other deficiencies in its proposal, such as the failure to provide sets of keys and storage racks, viewed separately, do not appear major and that, following discussions, they possibly could have been corrected with relatively minor revisions in the proposal. However, we think NRC reasonably determined that the cumulative effect of all the deficiencies made the proposal unacceptable and warranted eliminating Pace from the competitive range. See HITCO, B-232093, Oct. 11, 1988, 88-2 CPD ¶ 337.

While Pace contends that many of its deficiencies resulted from poor proposal draftsmanship, rather than a misunderstanding of the requirements, an offeror is responsible for preparing its proposal in a manner which establishes that what is offered will best meet the government's needs. A technical evaluation must be based on the information submitted with the proposal and no matter how capable an offeror may be, if it does not submit an adequately written proposal, it will not be considered in the competitive range. Data Controls/North, Inc., B-233628.4, Apr. 5, 1989, 89-1 CPD ¶ 354.

Accordingly, we find that Pace's proposal was properly excluded from the competitive range.

Senior Care protests the failure of the NRC to reopen the competition and permit Senior Care to submit a proposal. Senior Care contends that it would have submitted a proposal under the solicitation but the storage facility it planned to offer was not totally above-ground and, therefore, it was precluded from offering. Since the stipulation of dismissal of Pace's court action removed that restriction, Senior Care states it is now prepared to submit a proposal but that NRC refuses to resolicit for the requirement.

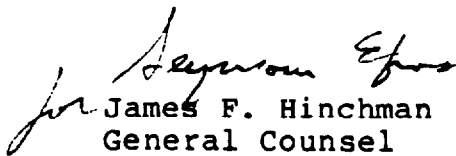
NRC reports that when Senior Care expressed an interest in competing, NRC made inquiries of the firm but Senior Care would not disclose the location of its facility nor the

identity of other firms utilizing Senior Care's facility because of "security reasons."

The Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551 et seq. (Supp. IV 1986), requires an agency to obtain full and open competition. Here, we find that full and open competition was obtained. Senior Care could have submitted a proposal under the initial solicitation, which did not contain the requirement for above-ground storage. It did not. Moreover, the agency received proposals from four small businesses. We also note that Pace, which was proposing a below-ground facility, submitted a proposal under the second RFP, notwithstanding the restriction.

Based on the above facts, and the fact that Senior Care would not reveal its performance location, and NRC's receipt of four small business proposals, we find that NRC acted properly in not reopening the competition.

The protests are denied.

  
for James F. Hinchman  
General Counsel